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Supreme Court of the United States

October Term, 1943.

No. 519

UNITED STATES *ex rel.* ROBERT E. LEE JORDAN
Petitioner,

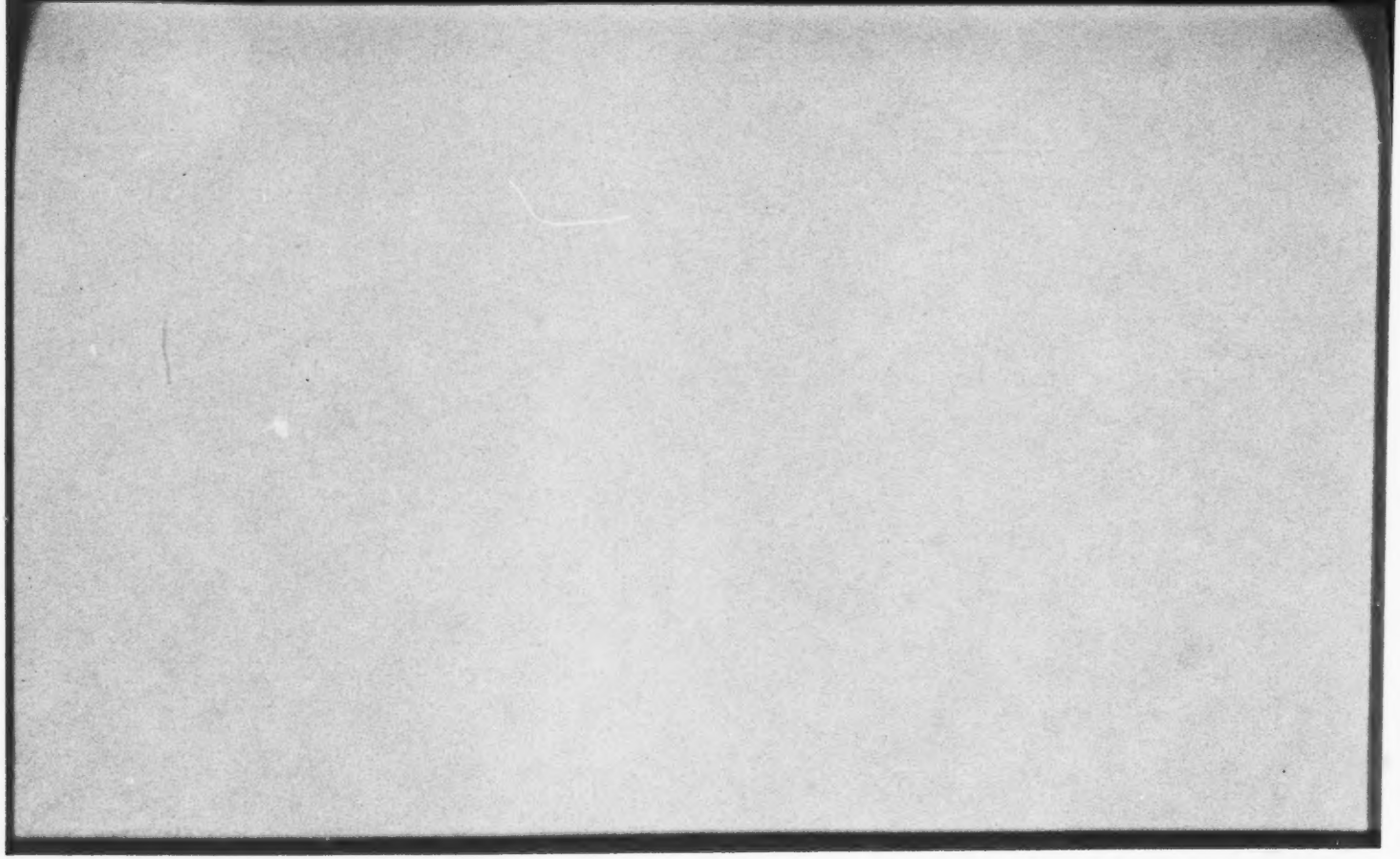
against

HAROLD L. ICKES, Secretary of the Interior.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

JAMES E. WATSON,
ORIN DE MOTTE WALKER,
Attorneys for Plaintiff,
Bowen Building,
815 Fifteenth St.. N. W.,
Washington, D. C.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.
CHARLES W. WARDEN, WASHINGTON REPRESENTATIVE,
TOWER BUILDING



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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

This is a petition for writ of certiorari to review the judgment of the District Court for the District of Columbia prior to the decision on appeal by the United States Court of Appeals for the District of Columbia and prior to a hearing or submission of the cause in the latter court.

Jurisdiction.

The jurisdiction of this Court is invoked under section 240(a) and sub-section 8(b) of The Judicial Code as amended by the Act of February 13, 1925, chap. 229, 43 Stat. 936.

Questions Presented.

1. This case raises for the first time the question of the ownership of and title to the submerged lands off the west

coast of California, within the three-mile limit, covered at all times by the territorial waters of the United States, which were acquired from Mexico by the United States by conquest, purchase, and cession in 1848 and confirmed by the Treaty of Guadalupe Hidalgo.

2. It raises the question as to the ownership and/or reservation of any and all minerals which are or may be found deposited in the submerged lands off the west coast of California within the three mile limit.

3. It raises the question of the interpretation of the Oil Land Leasing Act of 1920, 41 Stat. L. 437, as amended, 1935 49 Stat. L. 674.

Did Congress, under the terms of the Act and its amendment, confer upon or grant to the Secretary of the Interior the authority and/or discretion

(a) To determine as a matter of law, that the title to and ownership of, the submerged lands, off the west coast of California within the three mile limit, was in the State of California;

(b) To determine as a matter of law, that the deposits of oil, gas, and other minerals in the submerged lands, off the west coast of California within the three mile limit, belong to the State of California;

(c) To determine as a matter of law that the Department of the Interior had no jurisdiction to grant leases of the submerged lands within the three mile limit off the west coast of California when Congress had made no grant of the said lands to that State;

(d) To determine as a matter of law that Appellee had the right to deprive itself of jurisdiction over parts of the public domain, by denying the United States Government's ownership of the submerged lands, within the three mile limit off the west coast of California, and thereby to forfeit the right, title, and interest of

the United States Government to the said submerged lands and minerals therein;

(e) To nullify Appellant's legal right to leases of unreserved parts of the public domain, the submerged lands within the three mile limit off west coast of California, after Appellant had complied with the provisions of the Act and regulations of the Department of the Interior by rejecting Appellant's applications solely upon legal grounds and subsequently suspending action on Appellant's appeals for more than six years;

(f) To determine as a matter of law that Appellee had the right to suspend action upon the appeals of the Appellant for a period of more than six years, with no attempt to resolve the legal questions involved during that period of time, which has, due to the dilatory inaction of the Appellee, resulted in tremendous loss to the Appellant and the United States Government, by condoning the exploitation and drainage of Plaintiff's discovery of an oil structure by others, and preventing the development of new oil and gas fields which are urgently needed;

(g) To claim such unlimited discretion under the Act with respect to the granting of leases, as to be able to nullify the operation of the Act at Appellee's whim, when the only discretion granted Appellee under the Act, was to make the "necessary and proper rules and regulations" to effectuate the Act as amended.

Statement.

This suit originated as the result of the filing of two applications by the Petitioner with the General Land Office of the Department of the Interior on April 6, 1937, for prospecting oil and gas leases under the Oil Land Leasing

Act and amendments, and the regulations of the Department of the Interior, as set out in Circular No. 1386, on submerged lands off the west coast of California within the three mile limit. These applications were rejected upon a legal finding by the General Land Office, that the submerged lands belonged to the State of California and the Department of the Interior had no jurisdiction to grant leases thereof. On August 6th, 1937, the Petitioner filed appeals from the decision of the General Land Office, to the Secretary of the Interior. These appeals are still pending before the Secretary of the Interior. After waiting from August, 1937, to June 16th, 1942, for some action to be taken, Petitioner filed suit in the District Court for the District of Columbia asking for a declaratory judgment that the title to and ownership of the said submerged lands and the minerals therein, off the west coast of California and within the three mile limit was in the United States and under the jurisdiction of the Department of the Interior and prayed for coercive relief in order to secure action upon the appeals and execution of the leases, as Petitioner had complied with all the requirements of the Act and regulations of the Department of the Interior in force at the date of filing said applications. (Appellant's R. pp. 1 to 5 inclusive.)

In answer to the Petitioner's suit, in the District Court of the United States for the District of Columbia, the Secretary of the Interior filed a motion for summary judgment, supported by an affidavit setting out that the question as to the title to the submerged lands was being investigated by the Department of Justice. Your petitioner submitted certain evidence to the District Court taken from certain Congressional Committee records which indicated that the affidavit in support of the motion for summary judgment was not made in good faith; that there had been no action taken by the Department of the Interior or

the Department of Justice for a period of more than five years at the time of the filing of the action, and that no action by either the Department of the Interior or the Department of Justice had been taken since the filing of this suit; that the expressed desire on the part of the Department of the Interior and the Department of Justice, as set out in the evidence submitted, that the legal questions, herein raised, be resolved, by the Supreme Court of the United States lacked the essential elements of good faith, as evidenced by the motion for summary judgment seeking to prevent such determination.

Assignment of Error.

The District Court for the District of Columbia clearly erred we submit, in holding Appellant acquired no interest or legal right in the leases applied for under the Act and its amendment, when the Act "directs" leases to be executed to citizens upon compliance with amended Sec. 13 of the 1935 Amendment and the regulations of the Department of the Interior. In holding Appellant acquired only a privilege and not a right to leases upon compliance with the provisions of the Act; in holding that there were no material facts at issue; in failing to hold the inaction of the Appellee for more than six years to determine Appellant's rights to a lease was arbitrary and capricious or to grant coercive relief; in failing to take judicial notice of the lack of good faith on the part of the Appellee in suspending and withholding action for more than six years, Federal Rules of Civil Procedure No. 56(g); in failing to note the limitations upon the self-asserted claim of the Appellee to discretion, which the Act does not grant to Appellee; in failing to grant the relief prayed for under the declaratory judgment act, Federal Rules of Civil Procedure No. 57, and in granting summary judgment.

Your Petitioner does not at this time set forth all of the points which may be urged in the arguments on the merits of this cause should the writ be granted, but, in order to comply with the rules of this Court requiring that all issues upon which decision is requested be presented in the petition for certiorari, your Petitioner presents herewith as a part of this petition his brief for consideration with the petition discussing the questions involved, which include all the matters presented in it's assignment of errors on appeal to the United States Court of Appeals for the District of Columbia, as set out in Appellant's brief, and particularly to pages 25, 26, 29, 30, and 31 of the Appendix attached thereto.

Summary of Argument.

The provisions of the Oil Land Leasing Act of 1920, 41 Stat. L. 437, as amended in August, 1935, 49 Stat. L. 674, U. S. C. Title 30, ch. 3, para. 181, *et seq.*, set out the purpose of the Act and the requirements of those who desire to secure leases under the Act and its amendment. The pertinent provisions of the Act are set out in Appellant's Brief, herewith submitted, under Point I, pp. 8, 9, 10, and 11, and Point VI, pp. 28, 29, 30, and Appellant's Appendix, attached to the Brief on pp. 11, 14, 15, and 16. It is clear from the wording of the Act and the Amendment, and the regulations issued by the Department of the Interior, Circular No. 1386, the pertinent provisions of which are set out as an Appendix to this application for writ of certiorari that an applicant being a citizen and complying with the terms of the law and the regulations, is entitled to a lease.

Under the rule of the Department of the Interior, Plaintiff's Appendix to Appellant's Brief, pp. 7, 8, 9 10 and 11, that California owned the submerged land off the west coast of California and within the three mile limit, the question of how and by what means California acquired

the title to these submerged lands would seem pertinent. California did not acquire these submerged lands by conquest, purchase, or cession, from Mexico. California was non-existent as a State at the time the United States Government did acquire the territory from Mexico. California did not purchase the submerged lands from the United States Government and Congress, which under Article IV, section 3, of the Constitution, Appendix to Plaintiff's Brief, p. 17, has the sole right to dispose of the territory of the United States never included the submerged lands in any grant to California. California by the terms of the Enabling Act, section 3, Appendix to Appellant's Brief, p. 13, as a condition precedent to its admission to Statehood, waived all claims to the public land in the territory embraced within the limits of the now State of California. (Appellant's R. 57-58, 61-62.)

"The Government and its grants are the true source of title to all lands in this country." Worcester v. Georgia, 6 Peters 515; U. S. v. Castrillero, 17 U. S. L. Ed. 360; Parkinson v. Bracken, 39 Am. Dec. 296; Wilcox v. Jackson, 10 U. S. L. Ed. 264; Haydenfell v. Daney Gold Min. Co., 93 U. S. 634; Hicks v. Bell, 3 Calif. 227; Record, pp. 59-60, 66, 67, 68, 69, and 70. The Department of the Interior, notwithstanding its ruling that the submerged lands off the west coast of California, within the three mile limit, belonged to the State of California, admitted through the testimony of the Assistant Solicitor of the Department of Interior, Harry M. Edelstein, in 1937, that it was uncertain as to whether or not its decision was correct, and stated that it was the desire of the Department of the Interior that the question of title to the submerged lands be submitted to the United States Supreme Court. Record, pp. 94 to 99, inclusive. Further reference is made to Appellant's Brief, pp. 11 to 17, inclusive. A search of all Congressional grants does not reveal any grant of the sub-

merged lands off the west coast of California to California and the records of the Department of the Interior show no selection or patent of the submerged lands to California. (Appendix to Appellant's Brief, pp. 16 and 17.) It appears under the foregoing circumstances that the question of title should be resolved at this time.

The question of jurisdiction of the Secretary of the Interior over the public domain is fully covered in Appellant's Brief under Point III, pp. 18, 19 and 20. There is no authority under the Act or any other law under which the Secretary of the Interior can by a legal finding, divest the United States of its title to the public domain and thereby deny jurisdiction. A mistake in the law by the Secretary does not remove the land from his jurisdiction. West vs. Standard O. Co., 278 U. S. 200.

It has always been the policy of the United States to reserve to itself all minerals, wherever they may be found in the public domain; that grants of land do not convey mineral rights, unless they are specifically included. The courts have ruled that oil and gas are minerals and, therefore, would come within the purview of the established policy of the Government to except them from all grants (Appellant's R. pp. 59-60.) No act of Congress has granted to the State of California the minerals which are or may be found in the submerged lands off the west coast of California. Reference is made to Point IV, pp. 21, 22 and 23 of Appellant's Brief.

A vital question of law is raised by the self-asserted claim of the Secretary of Interior to discretion with reference to the granting of oil and gas leases. (Appellant's App. p. 15.) There seems to be nothing in the Oil Land Leasing Act, or its amendment of 1935, which grants to the Secretary the powers which he claims, under color of discretion. The only authority which he has, in the matter

of discretion, must be found in the Act and its amendment. There is nothing in the Act and its amendment to justify the making of legal decisions by the Secretary of the Interior; which authorized him to deny his jurisdiction over the public domain, by virtue of his own legal decision, which was erroneously based on tide and not submerged land; to deny the legal right of an applicant, who has complied with the law and the regulations of the Department of the Interior to secure leases; or which grants him the legal right to refuse to act upon appeals for a period of more than six years. The argument in support of these propositions will be found under Point V of Appellant's Brief, pp. 24, 25, 26, 27 and 28.

The courts have uniformly held the right to review the decisions of the Department of the Interior on matters of law. The arguments and authorities appear in Appellant's Brief, pp. 33 and 34, and Appellant's Record, pp. 70, 71, 75 and 76.

The proof of bad faith alleged by the Appellant is set forth in the Record, pp. 43-4-5, 71-2-3, 84-5-6, 94-5-6-7-8-9, 100-101, 103 and 104, and in Appellant's Brief, Point IX, pp. 34-5-6-7. It has been well established by the evidence presented in the Record that it has not been or is the intention of either the Department of the Interior or the Department of Justice to take any action on the legal questions raised which have been held in suspense from 1937 to date. It further raises the question of the duty of the Secretary of the Interior to conserve the oil resources of the Nation under Section 17 of the amended Act. (Appellant's Brief, p. 37.) There can be no justification whatsoever for the intentional refusal of the Department of the Interior to resolve the questions involved relative to Appellant's applications and appeals, which merit the consideration and decision of this Honorable Court.

In view of the bad faith established by the Record, under Federal Rules of Civil Procedure No. 56(g), the Court was in error in granting summary judgment (R. 82). The Court also was in error in failing to consult the provisions of the Act and particularly the amendments of 1935, and the material issues raised by the petition of Appellant. These points are covered under Point X of Appellant's Brief on pp. 37-8-9.

The Appellant under the law was entitled to coercive relief under the Declaratory Judgment Act, Federal Rules of Civil Procedure No. 57, Record, pp. 76-7-8-9-80-81, and cases cited in support thereof, by reason of the failure of the Appellee to take any action on Appellant's appeals for six years thereby denying Appellant's legal rights, and upon the legal grounds that the provisions of the Act and the requirements of the Department of the Interior, as set out in their Circular No. 1386, attached as an appendix, had been fully met, which points are presented in Appellant's Brief under Point XI, pp. 39, 40 and 41, and Appellant is entitled to relief.

The errors of the District Court as they appear in the opinion of the Court, Appellant's Appendix p. 21, consist in the failure to consider the amended Act of 1935 and the fact that Congress added the word "directed" to the Act, requiring the Secretary to act, and that the decisions quoted in support of the opinion were decisions made prior to the passage of the amendment to the Act in 1935 and that the cases cited as analogous were not so and did not cover the vital points at issue. These points appear under Appellant's Brief Point XI, pp. 41, 42 and 43.

It seldom occurs that Congress, by subsequent acts, interprets its own legislation, but in the case of the Oil Land Leasing Act it has done so in no uncertain terms. Congress changed the verbiage of the Act by the 1935 amendment

and in addition to the word "authorized," which expressed the power granted under the original Act of 1920, added the words "and directed" (Sec. 13 of the amended Act), and to confirm its understanding and its interpretation of these added words, it (Congress) passed several public acts using the same terminology "authorized and directed" and ordered the Department of the Interior to grant certain specified leases as shown by Public Law #371, 75th Congress, ch. 77, and Public Law #151, 77th Congress, ch. 74, par. 1, thus eliminating any possibility of the courts holding a contrary view of Congressional intent, to "direct" the Secretary of the Interior to issue leases. This interpretation should set at rest the self-asserted claim of the Secretary of the Interior, that any discretion was conferred upon him by the Act, other than that specifically granted, to make the necessary rules and regulations, to effectuate the law.

Reasons for Granting the Writ.

It is important to the United States Government that the question of title and ownership of the submerged lands off the west coast of California, within the three mile limit, be decided in order that it be determined if they are a part of the public domain and subject to be leased by citizens of the United States who qualify under the terms of the Oil Land Leasing Act of 1920, as amended in 1935. This question is presented for the first time for the adjudication of this Honorable Court.

It is in the interests of the United States Government and Appellant that the ownership of minerals, including oil and gas, which are or may be found in the submerged lands off the west coast of California within the three mile limit be determined, and if they are, according to the general policy of the United States Government with respect

to minerals, owned and reserved to the United States Government.

It is of vital interest to the United States Government and Appellant that the authority and/or self-asserted discretion claimed by the Secretary of the Interior under the Act and its amendment of 1935 should be interpreted and defined in accordance with congressional action. It should be determined if the Secretary has such power and authority that he may, by a legal decision, divest the United States Government of ownership of parts of the public domain; deny jurisdiction over parts of the public domain, and if he has the legal right, to suspend action on appeals for six years; to vitiate the purpose of the Act by withholding decision. It is essential that it be determined whether the will of Congress as expressed in the terms of the Act and amendment, represent the law or whether the Secretary of the Interior, acting under his self-asserted claim of discretion, may set at naught the Act and prevent the leasing of oil lands at his pleasure.

It is in the interests of the United States and the general public that all obstructions to the leasing of oil land, the production and development of new sources of supply, should be removed, including that of the Secretary of the Interior, by a decision of this Honorable Court.

It is exceedingly important that the authority of the Department of the Interior under the Act and its amendment be so defined that there may never be a reoccurrence of a situation such as in the instant case.

It is important that the dicta decisions of the courts, regarding the ownership of and title to the submerged lands and the extent of the public domain, included in the territory ceded by Mexico to the United States, be reviewed and made to conform to the acts of Congress and grants made by Congress, with reference to the public domain.

It would appear that a reaffirmation of the previous decisions of this Honorable Court, that legal decisions and mistakes of law made by the Secretary of the Interior, are not binding but are subject to review by the courts.

Conclusion.

The questions raised by this case are of first importance and in part have never before been submitted to the Supreme Court. An early authoritative decision on these questions is of pressing need, for in the last analysis the question of title to the submerged lands and the minerals therein, and the interpretation of the Oil Land Leasing Act and its amendments must be ruled upon by the Supreme Court. Your Petitioner has been deprived of his oil and gas rights for a period of more than six years; the United States, the owner of the oil and gas deposits in the submerged lands, has been deprived of the oil which is so necessary now for the conduct of the war; the necessity for conservation of the oil resources which are and have been drained by operators holding no leases from the Department of the Interior over the last six years should be determined without further delay; and the issue of certiorari before a hearing or decision of United States Court of Appeals for the District of Columbia is clearly in order.

Wherefore, your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the District of Columbia, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; that the District Court of the United States for the District of Columbia be reversed by this Honorable Court; and judgment entered in favor of the Petitioner, and your Petitioner prays for such

other and further relief in the premises as to this Honorable Court may seem meet and just.

November 24th, 1943.

Respectfully submitted,

JAMES E. WATSON,
ORIN DE MOTTE WALKER,
Attorneys for Plaintiff,
Bowen Building,
815 Fifteenth St., NW
Washington, D. C.